

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
825 North Capitol Street, NE, Suite 4150  
Washington, DC 20002-4210

JAN BOYER

Petitioner,

v.

DISTRICT OF COLUMBIA  
OFFICE OF TAX AND REVENUE  
Respondent

Case No.: TR-C-05-800045

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**FINAL ORDER**

On February 16, 2006, Respondent District of Columbia Office of Tax and Revenue (“OTR”) filed a Motion to Dismiss for Office of Administrative Hearings’ Lack of Jurisdiction (the “Motion”). For the following reasons, I will grant the Motion.

Petitioner Jan Boyer requested a hearing to appeal a November 4, 2005 Notice of “Proposed Assessment” issued by Respondent. The Notice proposed a reduction in Petitioner’s income tax refund for tax year 2004 in the amount of \$482. The bases for this action were: (1) Petitioner allegedly failed to provide substantiation for some of his deducted business expenses; and (2) Petitioner allegedly was not entitled to a deduction for his home office.

At a status conference on February 16, 2006, Respondent stated that there is a jurisdictional issue as to whether the Office of Administrative Hearings (“OAH”) may hear this dispute. However, Respondent declined to make a motion to dismiss the case at that time. After some discussion, at the request of both parties, I deferred ruling on this

issue. Instead, an evidentiary hearing was scheduled for April 25, 2006. On February 22, 2006, I issued an Order summarizing the status conference and notifying the parties of the hearing date.

At the time I issued this Order, I was unaware that on February 16, 2006, after the status conference, Respondent had filed its written Motion, seeking dismissal of this case. The case file has since then been forwarded to me, and I have awaited a response from Petitioner. As of this date, Petitioner has not filed a response to the Motion, although more than 11 days have elapsed since the Motion was served. *See* OAH Rule 2812.7 (unless otherwise ordered, all opposing parties shall have 11 days from service of a motion to file a response).

In the Motion, Respondent asserts that on April 13, 2005, Petitioner filed his 2004 District individual income tax return, claiming an overpayment of \$3,226. The Audit Division of Respondent then disallowed \$482 of the claimed overpayment, representing deductions for an office in the home and employee business expenses. Respondent issued a Notice of Proposed Audit Change, reflecting this proposed action, and the parties met in informal conference. They were unable to resolve the dispute.

On November 4, 2005, Respondent issued a notice of proposed action to reduce the refund amount from \$3,226 to \$2,844, based on the above determinations.<sup>1</sup> Unfortunately, Respondent used the “Notice of Proposed Deficiency Form” which applies to tax deficits, and not to reductions in tax refunds. The “Notice of Proposed Deficiency Form” also advised Petitioner that he could elect to seek review of the action

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<sup>1</sup> I note that the difference between \$3,226 and \$2,844 is \$382, not \$482.

in the Office of Administrative Hearings (“OAH”). Petitioner filed a timely notice of his hearing request, and waived his right to request review in the District of Columbia Superior Court.

Respondent contends that the use of the wrong form for notification of the action is immaterial to the jurisdictional issue. Respondent asserts two alternative grounds for its position that this administrative court lacks jurisdiction to hear the case: (1) The Superior Court has exclusive jurisdiction to hear all OTR tax cases involving the overpayment of tax, under D.C. Official Code § 47-3310(b); and (2) OAH has only limited jurisdiction to hear OTR tax cases where the action at issue is a proposed deficiency. D.C. Official Code §§ 2-1831.03(b)(4) and 47-4312. I agree with Respondent’s argument.

First of all, Respondent is correct that an invalid or misleading or erroneous notice cannot confer jurisdiction where none has been granted. OAH has limited jurisdiction that is conferred by statute, D.C. Official Code § 2-1831.03, or if statutorily authorized, by delegation. The power cannot be granted by notice of a specific agency action.<sup>2</sup>

D.C. Official Code § 47-3310(b) provides that in any proceeding regarding overpayments and refunds of taxes in the District, the Superior Court “has jurisdiction to determine whether there has been any overpayment of tax and to order that any overpayment be credited or refunded to the taxpayer, if a timely refund claim has been filed.”

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<sup>2</sup> This Order does not affect any remedies available or not available to Petitioner as a result of the allegedly defective notice. Since OAH has no jurisdiction to hear the case, I will not address this matter at all.

Under D.C. Official Code § 2-1831.03(b)(4), OAH has limited jurisdiction to hear “Adjudicated cases of the Office of Tax and Revenue arising from tax protests filed pursuant to D.C. Official Code § 47-4312.” Section 47-4312 applies only to notices of a proposed “final assessment of a deficiency, interest, or penalties against a person.”

In order to construe these three statutes in harmony, one must conclude that the Superior Court has exclusive jurisdiction to review final OTR actions to reduce overpayment refunds, while OAH has concurrent jurisdiction, with the Superior Court, to review proposed OTR actions to assess a tax deficiency. Under this construction, OAH has no power to review Petitioner’s case, notwithstanding OTR’s apparent use of the improper notice form.

According to Respondent, OTR has established an internal review system that Petitioner may be able to access. This Final Order does not affect any remedies Petitioner may have in another forum.

Therefore, upon consideration of Respondent’s Motion to Dismiss for Office of Administrative Hearings’ Lack of Jurisdiction, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2006:

**ORDERED**, that this case (800045) is hereby **DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION**; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

March 23, 2006

/s/ \_\_\_\_\_  
Paul B. Handy  
Administrative Law Judge